

APPEAL NO. 020742
FILED APRIL 26, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 13, 2002. The issues in two different cases were consolidated in one hearing. With respect to the issues before her in Docket No. 1 (the _____, compensable injury), the hearing officer determined that the respondent's (claimant) impairment rating (IR) is 16%, as certified by the designated doctor in an amended report and that the claimant is not entitled to supplemental income benefits (SIBs) for the third and fourth quarters. The hearing officer resolved the disputed issues relating to Docket No. 2 (the claimed _____, injury) by determining that the claimant sustained a compensable injury on _____, and that he had disability, as a result of that injury, from _____, through the date of the hearing. In its appeal concerning the _____, compensable injury, the appellant (carrier) challenges the determination that the claimant's IR is 16% and the hearing officer's factual findings that the claimant had no ability to work in the qualifying periods for the third and fourth quarters of SIBs, despite the hearing officer's conclusion that the claimant is not entitled to third and fourth quarter SIBs. In regard to the alleged _____, injury, the carrier appeals the determinations that the claimant sustained a compensable injury on that date and had disability from _____, through the date of the hearing as a result thereof. In his response to the carrier's appeal, the claimant urges affirmance.

DECISION

Affirmed.

Initially, we will consider the carrier's assertion that the hearing officer erred in determining that the claimant's IR for the _____, compensable injury is 16%, as certified by the designated doctor in his amended report. The carrier argues that the amendment was not made within a reasonable time or for a proper purpose. In Texas Workers' Compensation Commission Appeal No. 013042-s, decided January 17, 2002, we held that Rule 130.6(i) "does not permit the analysis of whether an amendment was made for a proper purpose or within a reasonable time." Appeal No. 013042-s also provided an explanation for the decision to give immediate effect to Rule 130.6(i).

The carrier also appealed two fact findings made by the hearing officer relating to the SIBs issues. However, in light of the hearing officer's determinations that the claimant did not satisfy either the good faith or direct result requirement and that the claimant is not entitled to SIBs for the third or fourth quarters, we determine that the carrier is not aggrieved by Findings of Fact Nos. 9.B. and 10.B. in that it is not liable for those benefits. As a result, we will not further address the carrier's assertions of error relative to the challenged factual findings.

The hearing officer did not err in determining that the claimant sustained a

compensable aggravation injury on _____, and that he had disability resulting from that compensable injury from _____, through the date of the hearing. There was conflicting evidence on the issue of whether the claimant sustained a compensable aggravation injury. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence and to decide what facts the evidence established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer was acting within her province as the finder of fact in deciding to credit the evidence tending to demonstrate that the claimant sustained a new and discrete work-related aggravation injury on _____, over the evidence to the contrary. Her determination in that regard is not so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Thus, no sound basis exists for us to disturb the challenged determination on appeal. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The success of the carrier's argument that the claimant did not have disability is dependent upon the success of its argument that the claimant did not sustain a compensable injury on _____. Given our affirmance of the hearing officer's injury determination, we likewise affirm the disability determination.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Terri Kay Oliver
Appeals Judge